

**SUNSHINE ORDINANCE TASK FORCE  
MINUTES OF SPECIAL MEETING OF  
TUESDAY, SEPTEMBER 14, 1999**

**Item 1 - Call to order/roll call.**

Chair David Pilpel called the September special meeting to order at 4:10 p.m. on Tuesday, September 14, 1999, and called the roll.

**Members present:** Angela Armstrong, Hilda Bernstein, Bruce Brugmann, Sue Cauthen, David Pilpel, Robert Planthold, Tuesday pay, David Watkins.

**Ex-officio members present:** deputy city attorney Jacqueline Minor, task force clerk Rachel Arnstine O'Hara, clerk of the Board of Supervisors Gloria Young.

**Members absent:** Johnny Brannon, Ruach Graffis, Nancy Sutley.

**Item 2 - Confirmation of Secretary for the next meeting.**

Hilda Bernstein was designated secretary for the September regular meeting. Bruce Brugmann was secretary for the Sept. 14 special meeting.

**Item 3 - Report of the Chair.**

Pilpel announced that City Administrator Steve Nelson (whose office provides the task force with administrative support) had recently resigned. This would not affect Arnstine O'Hara's work for the task force, Pilpel said, but served to re-emphasize the need for task force members to help handle the task force's administrative work load.

Pilpel deferred to Minor, who reported that deputy city attorney Susan Frankel was no longer assigned to serve as counsel to the task force. Minor will assume all of Frankel's task force duties.

Pilpel apologized that agendas for this meeting were not mailed until the previous day. He said they had been delivered to the mail room on Friday but did not go out until Monday. He said he had been awaiting responses confirming attendance from individuals invited to the hearings scheduled for the Sept. 14 meeting. He also said that he sent draft and final agendas to task force members by e-mail during the week prior to the meeting.

Bernstein said that this explanation was not acceptable.

Pilpel said announced there were no minutes from the last meeting, held July 29, because Graffis (who was secretary for that meeting) was not present with the minutes.

Brugmann questioned Pilpel about why the task force had not yet sent a letter to the Department of Elections which the task force had resolved to send following the task force's November 1998 hearing concerning the department's procedures for handling and accounting for ballot boxes on election day. Pilpel said the task force had discussed this matter previously. He also said that the tapes of that meeting had finally been returned to the task force, so that an authoritative letter could now be drafted. Brugmann asked that the DOE letter be placed on the agenda for the September regular meeting.

**Items 4a and 4b - Hearings on pending complaints (action item).**

Pilpel moved that 4b would be heard first due to time restrictions of some participants. Adopted without objection.

**Item 4b - Complaint of Aaron Peskin and Telegraph Hill Dwellers Association (THDA) against Department of Planning (DP)**

Pilpel asked if any task force members wished to make any disclosures in connection with the complaint. Cauthen said she lives within 300 feet of the development project named in the complaint, but that she has received no notices or other pertinent documents, and the final project would have no financial impact on her. She said she is a member of the THDA, but had not attended meetings nor been active for about 1.5 years. She also said she had consulted with the City Attorney's Office, which advised her she had no Conflict of interest in participating in the hearing.

Peskin, appearing on behalf of THDA, made an opening statement (Attached ~~to these minutes~~) which focused on two main points:

*to Complaint Files*

1. DP failed to respond within the statutory period to public records requests for draft Environmental Impact Reports pertaining to the Alta Street project. He said DP relied on a 1983 City Attorney opinion affirming that draft documents are not subject to disclosure pursuant to Sec. 6254 of the California Public Records Act. He said the opinion predated the Sunshine Ordinance, and that Sec. 67.24 of the Ordinance supersedes the state law and requires disclosure of drafts that are normally kept of file.

2. The Alta Street project developer (sponsor) received a Certificate of appropriateness for the project after justifying its application based on a draft EIR which was not made available to the public. Furthermore, this draft EIR did not include public comments nor DP responses to the comments.

Hillary Gitelman, DP Environmental Review Officer, spoke on behalf of DP. She apologized to THDA for the lateness of DP responses to records requests, and said DP felt it had provided specific enough reasons for nondisclosure. She said DP has specific guidelines for responding to public records requests, and that DP staff had received a memo the previous day urging compliance with the Sunshine Ordinance. She said the developer had been foolish in citing the draft EIR in its application and had no grounds "for basing its application on conclusions that had not yet been reached." She said this draft EIR has now been made public, and emphasized that the point of the CEQA (California Environmental Quality Act) procedures followed by DP for drafting EIRs was to solicit public comment. She distributed a one-page handout (attached) summarizing DP's EIR development process.

Gitelman said that DP's record retention policies require staff to discard working ("pre-publication") drafts of EIRs "by the time" the final draft EIR is published, but it was up to individual staff members whether to discard working drafts gradually or all at once upon publication. Therefore, she said, these working drafts are not normally kept on file, and so are not covered by Sec. 67.24. She gave three reasons why working drafts are not made public:

1. They may contain inaccurate information.
2. Disclosure may have a chilling effect on contact between DP and consultants hired to prepare EIRs.
3. The delays caused by disclosure and comment of each working draft could impair DP's abilities to meet CEQA-mandated deadlines.

Gitelman said that to date, all documents requested by THDA (including the draft EIR cited by the developer in its application for a

certificate of appropriateness) were made public on or before July 1, 1999, except that other pre-publication working drafts (which may have existed at the time of THDA's requests) have since been discarded per DP's record retention policies, because the draft EIR has been published.

During public comment Nancy Shanahan pointed out the inconsistency that the DP had accepted the developer's application for a certificate of appropriateness as complete despite being advised by THDA that the draft EIR and any comments and DP responses had not yet been made available to the public.

Gitelman's statement and subsequent questioning of Gitelman and Peskin by the task force elicited a lengthy discussion of DP's procedures for contracting with outside vendors to prepare EIRs. Two basic procedures were described: generally, they are:

1. DP hires and manages an environmental consultant directly. In this scheme, neither the public nor the developer would see pre-publication drafts of the EIR, but only the draft EIR once it is published. Gitelman said that DP does not have sufficient contract management staff and resources to adopt this scheme, although she had no objection to it, and said other cities and departments use this scheme.
2. The developer hires an environmental consultant, whose work is managed by DP. Gitelman said this is the scheme currently used by DP. Peskin said that in this scheme, even though DP directs the consultant's work, there is no way for DP to prevent the developer from influencing the EIR's content during its development. Peskin said that for this scheme to work fairly, any document or draft disclosed to the developer must also be made public.

Gitelman said that as a result of THDA comments in response to the draft EIR, the Alta Street project is no longer proceeding. She said this is an example of the effectiveness of DP's process for developing EIRs and obtaining public input.

There was no motion and the task force took no vote on the hearing. Pilpel continued the matter to the next regular meeting on Sept. 28 to consider further the two contracting schemes described. He requested further information from DP prior to the meeting:

1. The Sept. 13 memo to DP staff cited by Gitelman regarding handling of public records requests.
2. Chapter 31 of the city's Administrative Code.
3. DP's record retention policies.

Item 4a - Complaint of James Corriyan against SF Fire Department (SFFD) Corriyan informed the task force that he retired from the SFFD in 1991 and had been monitoring the SFFD for the past 4-5 years. He said his complaints were not directed against SFFD personnel, but with its organization and management style. The core of the problem with the San Francisco Fire Department is this, he said, that having an excuse for not providing material is as good as providing it. He said he had been told by deputy city attorney John Cooper that the problem is that top SFFD officials understand how to handle public records requests, but not SFFD's civilian administrators. Corriyan said this statement was an excuse and unacceptable.

SFFD Deputy Chief of Administration Patrick White spoke in response (statement attached). He said he was providing the task force with the SFFD's written policy and procedures for handling public records

requests (attached). He explained the SFFD's procedures. He said that reorganization of the SFFD under a federal consent decree had added significantly to the department's administrative work load. After summarizing Corrigan's complaints, and informed the task force that in response to them, 1) the requested overtime report was sent to Corrigan on Sept. 9, 1999, and 2) the SFFD Customer Service Plan requested by Corrigan has not yet been developed. He informed the task force that Corrigan had, by his own admission, made at least 21 Immediate Disclosure Requests for information and 28 additional inquiries; some of these have required considerable work to respond to. White apologized to Corrigan for any delays, and assured the task force that the SFFD does not intend to withhold information inappropriately and makes every effort to respond timely to Immediate Disclosure Requests and to follow its established policies.

Corrigan said he had received information on all 21 Immediate Disclosure Requests but not all inquiries.

Pilpel thanked Corrigan for recommended task force action, but Corrigan made no recommendation. No motion was made, and the matter was considered resolved.

Public: *comment on items not appearing on agenda*

Mia Lord asked the task force to take action to reverse a Department of Building Inspection decision requiring her to bring her residence up to code. Task force members informed her that this was not a matter within the task force's jurisdiction, and advised her to seek legal assistance.

*Item 5 Report of the Education & Outreach Committee*

This item was not considered due to lack of time.

*Item 6 - Review schedule and agenda items for the next meeting.*

Pilpel announced the September regular meeting would be held Sept. 28.

*Item 7 - Adjournment*

The meeting was adjourned at 6:20 p.m.